

## LOCKHART-BEMBERY VS. WAYLAND CondenseIt™

DEPO OF

EXHIBIT

A

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UNITED STATES DISTRICT COURT  
 DISTRICT OF MASSACHUSETTS

YVETTE LOCKHART-BEMBERY  
 Plaintiff,

vs.

C.A. NO.  
 04-10581-PBS

TOWN OF WAYLAND POLICE  
 DEPARTMENT, ROBERT IRVING  
 in his capacity as CHIEF OF  
 THE WAYLAND POLICE DEPARTMENT  
 and DANIEL SAURO,  
 Defendants.

DEPOSITION OF DANIEL SAURO,  
 a witness called on behalf of the Plaintiff, taken  
 pursuant to the provisions of the Federal Rules  
 of Civil Procedure, before Kathleen M. McHugh, a  
 Registered Professional/Certified Shorthand  
 Reporter (#12093) and Notary Public in and for  
 the Commonwealth of Massachusetts, at the offices  
 of Jason & Fischer, 47 Winter Street, Boston,  
 Massachusetts, on Tuesday, February 1, 2005,  
 commencing at 1:13 p.m.

COPLEY COURT REPORTING  
 101 Tremont Street  
 Boston, Massachusetts 02108  
 (617) 423-5841

PROCEEDINGS

MR. FISCHER: As far as stipu-  
 can we agree to waive objections ex-  
 until time of trial?

MR. SILVERFINE: Yes.

MR. FISCHER: Reserve motions to  
 strike until time of trial and I'd ask your  
 pleasure as to the witness reading and signing.

MR. SILVERFINE: You have a choice.  
 You can have an opportunity to read the  
 Stenographer's transcription, take it and read it,  
 or you can waive it and say it will be deemed  
 waived. You have an opportunity to look at it  
 and then --

THE WITNESS: I'd feel better reading  
 it first.

MR. SILVERFINE: Fine. Why don't we  
 read and sign and we'll waive notary.

DANIEL SAURO, having been  
 satisfactorily identified and duly sworn by the  
 Notary Public, testified as follows in answer to  
 direct interrogatories by Mr. Fischer:

Q. My name is Andrew Fischer. I represent  
 Yvette Lockhart-Bembery in an action she's brought

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## APPEARANCES:

JASON & FISCHER  
 (By: Andrew M. Fischer, Esquire)  
 47 Winter Street  
 Boston, Massachusetts 02108  
 Counsel for the Plaintiff

BRODY, HARDOON, PERKINS & KESTEN, LLP  
 (By: Jeremy J. Silverfine, Esquire)  
 One Exeter Plaza  
 Boston, Massachusetts 02116  
 Counsel for the Defendants

in which you're a party and in that capacity I'm  
 entitled to ask you questions which you're obliged  
 to answer under oath.

You understand this?

A. Yes.

Q. And you need to verbalize your  
 answers. You can't say -- you can't shake or nod  
 your head and you can't say mm-hmm or mm-hmm  
 because they come out the same in the  
 Stenographer's transcript.

A. Understood.

Q. Okay. From time to time I will do as  
 lawyers manage to do is make something confusing,  
 and if I ask a question that you don't understand,  
 I'm going to ask you to tell me your question is  
 confusing or I don't understand it, otherwise,  
 we're going to assume you understand the  
 question.

A. Yes.

Q. And, lastly, from time to time  
 Mr. Silverfine may say objection. You're still  
 obliged to answer the question. He's objecting so  
 that we can take before the judge whether the  
 question was appropriate at some later time.

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 DANIEL SAURO  
 (By Mr. Fischer) 4

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1 Incident Report, dated 2/6/02, consisting of two pages.	84
2 Incident Narrative Report, dated 2/6/02.	86
3 Diagram.	86

In fact, you need to answer every  
 question, even if Mr. Silverfine tells you not to  
 answer the question, although if he tells you not  
 to answer the question, your answer will be that  
 you're declining to answer the question upon the  
 advice of Mr. Silverfine.

A. Understood.

Q. You still need to say that on the  
 record.

A. Understood.

MR. FISCHER: Now, did we get an  
 identification?

THE STENOGRAPHER: Yes.

MR. FISCHER: I've never met Mr.  
 Silverfine.

A. I'll give you one of my cards, also.

Q. Can you tell us your name and address,  
 sir?

A. It's Daniel Sauro, S-a-u-r-o, and my  
 address -- you can contact me at any time at the  
 Wayland Police Department, 38 Cochituate Road,  
 Wayland, Mass., 01778.

Q. And in what town do you reside?

A. I'd rather not answer that for privacy

DEPO.OF: DANIEL SAURO

CondenseIt™ LOCKHART-BEMBERY VS. WAYLAND

<p>Page 55</p> <p>1 A. Correct. Just off the shoulder it's 2 all grass on either -- on both sides. 3 Q. And the roadways were clear of ice? 4 A. I can't say for sure. I can't say for 5 sure. 6 Q. I'm going to ask, could you sketch out 7 maybe down the middle of the paper -- 8 A. Sure. 9 Q. Can you show us Route 30 and the two 10 lanes of travel, the shoulder and then where the 11 grass was? 12 A. Okay. To the best of my -- now, some 13 of this has changed. They've done a lot of 14 building and excavating and stuff over the years. 15 Q. I'm asking on the day of the incident. 16 A. Okay. To the best of my recollection, 17 to my terrible ability to write -- 18 Q. I should warn you that I'm going to ask 19 you to put in Willowbrook Road or whatever it is. 20 A. Okay. If I put in Willowbrook, I can't 21 get to where the incident actually occurred, is 22 that okay, or do you want me to start back a bit? 23 Q. Why don't you start back a bit and take 24 another piece of paper if you need to?</p>	<p>Page 58</p> <p>1 Q. Grass, the lawn to a person's home, or 2 grass, wild grass? 3 A. Well, kind of -- well, it's funny. I 4 don't know where -- what was personal property, 5 but there was a driveway right near the car and 6 after the driveway there was grass on both sides 7 and a hill, okay, kind of a hill going down. The 8 driveway was also on a hill. So I don't know what 9 they owned, you know. 10 Q. So the garage at the end of the 11 driveway was lower than the level of the street? 12 A. Yeah. Definitely there was a real 13 downgrade for the driveway and also a downgrade 14 for the grass, a definite downgrade. 15 Q. Can you show us the driveway? 16 A. Okay. Let me cut the -- okay. I think 17 it went like this (indicating). This is all grass 18 and there is a downgrade. Okay. I'd say that 19 would be similar to the driveway. It was the 20 first driveway into Natick. It's about the only 21 one in that area. It's just a little, bitty house 22 and it's been rebuilt as a matter of fact. They 23 destroyed it all. It's been, like, done over, I 24 think, twice actually.</p>
<p>Page 56</p> <p>1 A. Okay. There's quite a stretch of road 2 there, sir, quite a stretch of road. To make it 3 easy I'll start back here (indicating). Okay. 4 This would be Rice Road. This is not to scale, 5 okay? Can you make that out okay? 6 Q. That's good. 7 A. This would be Route 30 both ways. 8 Q. Can you show us the -- can you -- 9 A. Make, like, a line down the middle. 10 Q. Right. 11 A. Well, there was lines down the middle. 12 It's a no-passing zone -- 13 Q. Okay. 14 A. -- like this (indicating). 15 Q. Do you want to continue 30 down so if I 16 ask you to put in -- 17 A. Where the incident occurred? 18 Q. Where you saw the car. 19 A. Sure, come up somewhat like this 20 (indicating) and then -- let me see. That starts 21 a curve. You go uphill like this, something like 22 this (indicating). I'm definitely not a sketch 23 artist here. Okay. 24 Q. What are you writing here?</p>	<p>Page 59</p> <p>1 Q. Okay. 2 A. So it's all the area that was once 3 there and set up is gone. It's completely 4 different. 5 Q. And the -- 6 A. Do you want the vehicle as I first saw 7 it, sir? It would have been about -- 8 MR. SILVERFINE: Why don't you wait 9 for his question. 10 Q. Show us the vehicle where you first saw 11 it and if you can draw it to show us where it was 12 in relation to the shoulder of the roadway and the 13 grass. 14 A. I'll do my best. Okay. 15 Q. So the car was halfway -- half of the 16 car was in the roadway and half of the car was on 17 the shoulder? 18 A. Well, I'll say probably three-quarters 19 of the car was in the roadway. 20 Q. Now, let me just go back and ask you. 21 You say there was a house there. Was this a 22 residential area or a more rural area? 23 MR. SILVERFINE: Objection as to 24 form. You can answer.</p>
<p>Page 57</p> <p>1 A. Natick line. 2 Q. Okay. 3 A. Natick line is right about the end of 4 the straightaway. 5 Q. Why don't you put a dotted line to show 6 the -- 7 A. Okay. That would be the Natick line 8 there (indicating). 9 Q. Can you show us the shoulder of the 10 road? 11 A. Let me see. The shoulder would be like 12 this (indicating). It's not very big. 13 Q. When you say it's not -- the shoulder 14 wasn't wide enough to contain a car without the 15 car being into the -- 16 A. Into the travel lane. 17 Q. -- travel lane? 18 A. Correct, sir, yes, that's correct. 19 Okay. 20 Q. And what was beyond the shoulder in the 21 area where you saw -- where you saw the car in 22 response to this call? 23 A. Okay. On the shoulder was grass and a 24 driveway.</p>	<p>Page 60</p> <p>1 A. By technical law I think it would be a 2 rural area because you have to have a dwelling 3 every so many hundred feet for a quarter of a mile 4 to be a thickly settled and I don't believe that 5 would pertain. So I think it would be legally a 6 rural area since there were no houses close by at 7 that time. There are now. 8 Q. I was asking more your sense as you 9 drove down the road. Did you see trees or houses? 10 A. Trees more than houses, sure. 11 Q. And how many -- you say this 12 Willowbrook was the entrance to that condominium 13 complex? 14 A. Yes, sir. 15 Q. From Willowbrook down to the driveway, 16 how far was it roughly? We won't hold you to 17 within ten feet. 18 A. Good quarter of a mile. 19 Q. Okay. 20 A. It was a good ways. 21 Q. And there weren't any houses between 22 there and this driveway? 23 A. Correct. 24 Q. So -- that's a bad question. From</p>

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<p>Page 67</p> <p>1 See, this way, the people coming up the 2 straightaway had a line of sight of my lights, but 3 also the people coming down would have a line. If 4 I was further down, only people going further down 5 would see my lights. If I was further up, only 6 people coming down would see my lights. So I was 7 trying to think of safety. 8 Q. And this marking on the road was the -- 9 this marking you said -- there were marks next to 10 where you put the car, your pen marks? 11 A. Oh, that was just grass. I recall that 12 was all grass right here (indicating) and that was 13 ice-covered grass. That I remember very 14 distinctly. 15 Q. And what about near the Cadillac? 16 A. It was grass up here (indicating), 17 too. 18 Q. Okay. 19 A. It was grass and it had, like, a little 20 curve, you know, going up. 21 Q. And the grass sloped down from the 22 roadway -- 23 A. Yes, it did. 24 Q. -- downhill?</p>	<p>Page 70</p> <p>1 you mean police officers? 2 A. Well, police. In our department there 3 is a chief's directive that we do not push motor 4 vehicles by hand. I've been injured twice myself, 5 hurt my back twice, pushing cars. 6 Q. Now, how could -- so you disobeyed the 7 directive? 8 A. No. The directive is we do not push -- 9 we, the police officer, never gets out and pushes 10 a car. 11 Q. Okay. Now, you told me that you've 12 been injured twice pushing cars? 13 A. Yes, prior to this directive, and 14 that's one of the reasons. Many other officers 15 have been hurt, also. That's why the directive 16 came out not to hand-push the car. We didn't want 17 men out on disability. 18 Q. So it's a dangerous thing to push a 19 car? 20 A. It can be. 21 Q. And that's why police officers are 22 directed not to do so? 23 A. We are. 24 Q. I'm going to show you the copy of the</p>
<p>Page 68</p> <p>1 A. Yes, sir. 2 Q. So you got out of your vehicle and 3 walked to the Cadillac? 4 A. Mm-hmm. 5 Q. And the woman got out of the Cadillac? 6 A. Eventually, yes. 7 Q. And you observed her to be larger or 8 smaller than you? 9 A. I think about the same height, but I 10 believe she might be a little heavier than I was. 11 Q. And she told you that the car -- I'm 12 sorry. What did she tell you? 13 A. She told me that the car was broken 14 down and that she had called AAA to tow it. 15 Q. Okay. And what happened next? 16 A. I called into the station and just 17 let them know it was in Natick, the DMV was in 18 Natick; that I would stand by and direct traffic; 19 that the lady had called AAA. 20 Q. And did you receive any instructions? 21 A. No. 22 Q. And what did you do? 23 A. I received only a confirmation they 24 received my radio transmission.</p>	<p>Page 71</p> <p>1 rules and regulations that were provided to me by 2 your attorney and ask you if you can find me that 3 regulation. 4 A. Okay. These are rules and 5 regulations. I'm talking about a directive from 6 the chief of police which I don't believe is in 7 here. 8 Q. Would you agree to provide me with a 9 copy of that directive? 10 A. I'd be glad to try to find it for you. 11 Q. Maybe you want to talk to your lawyer 12 and just agree that -- 13 MR. FISCHER: Or maybe I can ask you, 14 Mr. Silverfine. 15 MR. SILVERFINE: If you put it in 16 writing, I'll take a look at it. 17 A. I'll be happy to. 18 Q. So you weren't about to push this 19 vehicle because it wasn't safe to do so? 20 MR. SILVERFINE: Objection as to 21 form. 22 A. No. I was not going to touch the 23 vehicle. 24 Q. Okay. But you suggested to the woman</p>
<p>Page 69</p> <p>1 Q. And what did you do? 2 A. I started directing traffic and it 3 started to get more backed up and I started to 4 get nervous that we were going to have another 5 accident there. So I went back to the lady. 6 Q. You say another accident? 7 A. Well, excuse me, have an accident 8 there, I'm sorry, have an accident there. 9 Q. So there hadn't been an accident yet? 10 A. No, not yet, but I've seen many 11 accidents on that curve. So I was getting worried 12 that there might be an accident because of the 13 vehicle, the way it was positioned, and I went 14 back to the lady and I said, would you like to try 15 rolling your car backwards. I said, you get into 16 the car, put it in neutral, put the key forward so 17 the steering wheel will turn, and slowly just, you 18 know, just using gravity, just let it roll back 19 and get it a little more off the road and maybe 20 you could even roll it into that driveway. But I 21 said, this is a suggestion, and I've made this 22 same suggestion to numerous people because we are 23 not allowed to physically push a car. 24 Q. Now, do you know -- when you say "we,"</p>	<p>Page 72</p> <p>1 in the vehicle that she should move the vehicle 2 off the roadway? 3 A. Roll it, drive it, roll it backwards, 4 from gravity, not pushing it; to have her get in 5 the car, put it in neutral, and gravity would just 6 let it roll back, which she did. 7 Q. And she was in the car when she did 8 that? 9 A. She certainly was. 10 Q. And she did that because you told her 11 to do it? 12 A. No. I suggested if she'd like to get 13 it off the road a little more, that she could do 14 that. 15 Q. And what did she say? 16 A. She was very cooperative and said sure, 17 I'll give it a try, or something like that. She 18 said sure. She got in and I stopped all the 19 traffic both ways and she started and she got in 20 the car and started rolling it back pretty good, 21 over towards the side of the road, towards this 22 driveway, and I think what happened is she wanted 23 to cut into the driveway but -- but kind of 24 overshot it a little bit probably because the</p>

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<p>Page 109</p> <p>1 would have decided to push her vehicle the way she 2 did? 3 MR. SILVERFINE: Objection as to 4 form. You can answer if you know. 5 A. No, not really, not after I told her to 6 stop it, you know, and just wait for the wreckers. 7 Q. And have you thought about why she did 8 this on her own? 9 A. Yes. I've given that some thought. 10 I've given some thought to that. 11 Q. Now, is it your testimony that she did 12 this on her own; am I correct? 13 A. Absolutely. 14 Q. And you say you've given it some 15 thought why she did it on her own? 16 A. Yes, I have. 17 Q. And why do you think she did this on 18 her own? 19 MR. SILVERFINE: Objection as to 20 form. 21 A. I think she might have thought that it 22 was imperative for whatever reason for her to get 23 the car off the road. 24 Q. Why do you think she might have thought</p>	<p>Page 112</p> <p>1 A. Yes. 2 Q. What sports? 3 A. One mile indoor and cross country. 4 Q. So you were a runner? 5 A. Track. 6 Q. Track? 7 A. Mm-hmm. 8 Q. Do you participate in any sports on a 9 formal or informal basis now? 10 A. No. 11 Q. Have you in the last ten years? 12 A. No. 13 Q. You don't join Mr. Kesten's Sunday 14 pickup games? 15 A. I wish I did have time to play a 16 sport. 17 Q. Okay. 18 MR. FISCHER: I have no further 19 questions. 20 MR. SILVERFINE: Can I just get 21 copies of these? 22 MR. FISCHER: It's my practice to ask 23 the Stenographer to take them and affix them to 24 the deposition. I can make you copies, too.</p>
<p>Page 110</p> <p>1 that? 2 MR. SILVERFINE: Objection as to 3 form. 4 A. She could have -- you know, 5 communications can always be -- I've seen 6 in my job communications can at times be 7 misinterpreted, even though I was as plain 8 and straightforward as I could be that day. I 9 can't out rule the chance that she completely 10 misunderstood what I said. 11 Q. As you look back now, thinking about 12 this, do you think maybe she did -- she did 13 misunderstand what you said? 14 MR. SILVERFINE: Objection as to 15 form. 16 A. Not -- I don't think there's any way 17 she could misunderstand when I told her to stop 18 pushing the car and there's no way she could 19 misunderstand when I'm yelling at her, let it go, 20 let it go, let it go, repeatedly, as the car goes 21 down the hill and she goes running after it. 22 Those things I don't think she could possibly 23 misunderstand. 24 Q. So you don't think looking back on this</p>	<p>Page 113</p> <p>1 Off the record. 2 (Whereupon the deposition was 3 adjourned at 3:42 p.m.) 4 5 6 7 8 9 10 11 12 13 14 15</p>
<p>Page 111</p> <p>1 that there was anything that you might have said 2 that caused her to think she should have done what 3 she did? 4 MR. SILVERFINE: Objection as to 5 form. 6 A. No, not the actions she took, no. 7 Q. And it's fair to say you don't think 8 that anything you did had anything to do with what 9 happened? 10 MR. SILVERFINE: Objection as to 11 form. 12 A. No, not the accident, no, sir, not at 13 all. 14 Q. Are you under any medication as you sit 15 here today? 16 A. No, sir. 17 Q. Do you take any medication regularly 18 for any physical or mental ailment? 19 A. No. 20 Q. Have you ever been arrested or 21 convicted of a crime? 22 A. No. 23 Q. In high school did you participate in 24 any athletics?</p>	<p>Page 114</p> <p>1 <b>CERTIFICATE</b> 2 I, DANIEL A. SAURO, do hereby certify 3 that I have read the foregoing transcript of the 4 deposition given by DANIEL SAURO, and I further 5 certify that said transcript is a true and 6 correct record of said testimony (with the 7 exception of the following corrections listed 8 below): 9 10 11 12 13 14 15 16 17 18 19 Dated at _____, this _____ day 20 of _____, 2005. 21 MAURICE F. JOYCE 22 Signed under the pains and penalties of perjury. 23 24</p>

DEPO-OF: DANIEL SAURO

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1 CERTIFICATE  
2  
3 COMMONWEALTH OF MASSACHUSETTS  
4 SUFFOLK, SS.  
5 I, Kathleen M. McHugh, a Notary Public  
6 in and for the Commonwealth of Massachusetts,  
7 do hereby certify:  
8 That DANIEL A. SAURO, the witness whose  
9 testimony is hereinbefore set forth, was duly  
10 sworn by me and that such testimony is a true and  
11 accurate record of my stenotype notes taken in the  
12 foregoing matter, to the best of my knowledge,  
13 skill and ability.  
14 IN WITNESS WHEREOF, I have hereunto  
15 set my hand and Notarial Seal this 2nd day of  
16 February, 2005.  
17 KATHLEEN M. MCHUGH  
18 CRJ/RPR/CSR #120093  
19 Notary Public  
20 My Commission Expires: August 8, 2008  
21  
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